

ORIGINAL

LEONARDO M. RAPADAS
United States Attorney
ROSETTA L. SAN NICOLAS
Assistant U.S. Attorney
Suite 500, Sirena Plaza
108 Hernan Cortez Avenue
Agana, Guam 96910
Telephone: (671) 472-7332
Telecopier: (671) 472-7334

Attorneys for United States of America

FILED **FILED**
DISTRICT COURT OF GUAM
DISTRICT COURT OF GUAM
SEP 17 2006
AUG 31 2006
MARY L.M. MORAN
CLERK OF COURT
CLERK OF COURT

10

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF GUAM

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JUSTIN KEN TAISIPIC,

Defendant.

CRIMINAL CASE NO. 06-00022

AMENDED
PLEA AGREEMENT

Pursuant to Rule 11(c)(1)(B), the United States and the defendant, JUSTIN KEN TAISIPIC, enter into the following plea agreement:

1. The defendant agrees to enter a guilty plea to Count I and II of an Indictment charging him with Hobbs Act Robbery and Using and Carrying a Firearm During a Crime of Violence, in violation of Title 18, United States Code, Section 1951(a) and Using and Carrying a Firearm During a Crime of Violence, in violation of 18 United States Code, Section 924(c)(1)(A)(ii) and Title 18, United States Code, Section 2.

2. The defendant, JUSTIN KEN TAISIPIC, further agrees to fully and truthfully cooperate with Federal law enforcement agents concerning their investigation of the possession, receipt, and distribution of firearms or ammunition, and related unlawful activities, including the

1 disposition of profits from and assets relating to such activities. He agrees to testify fully and
2 truthfully before any grand juries and at any trials or proceedings against any co-conspirators if
3 called upon to do so for the United States, subject to prosecution for perjury for not testifying
4 truthfully. The United States will make this cooperation known to the Court prior to the
5 defendant's sentencing. The defendant further understands that he remains liable and subject to
6 prosecution for any non-violent Federal or Territorial offenses that he does not fully advise the
7 United States, or for any material omissions in this regard. In return for this cooperation, the
8 United States agrees not to prosecute defendant in the District of Guam or the Commonwealth of
9 the Northern Mariana Islands for any other non-violent Federal offenses which he reveals to
10 Federal authorities.

11 3. The defendant, JUSTIN KEN TAISIPIC, understands and agrees that any and all
12 assets or portions thereof acquired or obtained by him as a direct or indirect result of illegal
13 receipt, possession, transportation, or trafficking in firearms or ammunition or used to facilitate
14 such illegal activity shall be surrendered to the United States or any lawful agency as may be
15 directed by the Court. The assets to be surrendered include, but are not limited to, cash, stocks,
16 bonds, certificates of deposit, personal property and real property.

17 4. The defendant, JUSTIN KEN TAISIPIC, further agrees to submit to a polygraph
18 examination by any qualified Federal polygraph examiner if called upon to do so by the
19 government. The defendant understands that such polygraph examinations may include, but will
20 not be limited to, his knowledge of or involvement in unlawful firearm and related activities, his
21 knowledge of others' involvement in such activities, and the identification of any and all assets
22 and conveyances acquired in whole or in part by the defendant or others through unlawful
23 firearm activities or the use of such assets or conveyances to further such unlawful activities.
24 Defendant understands that the government will rely on the polygraph in assessing whether he
25 has been fully truthful.

26 5. The defendant, JUSTIN KEN TAISIPIC, understands that the maximum sentence for Count I,
27 Hobbs Act robbery is twenty years, and the sentence for using and carrying a firearm during a
28 robbery is life imprisonment and a \$250,000 fine.

*Count II,

1 ~~not more than life imprisonment.~~
crime of violence is not less than seven years, and a ~~\$500,000 fine.~~ Any sentence imposed shall
2 include a term of supervised release of ~~at least 3 years~~ ^{not more than 5} in addition to such terms of

3 imprisonment, as well as such restitution as the court may order and a \$100.00 special
4 assessment fee. Defendant understands that if he violates a condition of supervised release at any
5 time prior to the expiration of such term, the court may revoke the term of supervised release,
6 thereby resulting in the additional incarceration of defendant for not more than two (2) years. **

7 The total special assessment fee of ~~\$100.00~~ ^{\$200.00} must be paid immediately upon sentencing.

8 The government will recommend a fine within the Sentencing Guidelines range. If defendant is
9 financially unable to immediately pay the fine in full, defendant agrees to make a full disclosure
10 of his financial status to the United States Attorney's Office by completing a Financial Disclosure
11 Form (OBD-500) for purpose of fixing a monthly payment schedule. Defendant understands
12 that, by law, interest accrues on any remaining balance of the debt. If defendant cooperates as set
13 forth in Paragraphs 2, 3, and 4, the government will recommend that defendant receive the
14 minimum term of incarceration legally available under the applicable statutes and Sentencing
15 Guidelines. If defendant does not fully cooperate as set forth in Paragraphs 2, 3, and 4, the
16 government will recommend a sentence of incarceration within the applicable statutes and
17 Guidelines range it may deem appropriate.

18 6. If defendant provides full, truthful, and substantial assistance to investigating
19 federal agencies, the government will move the Court, as provided by Section 5K1.1, United
20 States Sentencing Guidelines, hereinafter USSG, and 18 U.S.C. Section 3553(e), for a downward
21 departure from the Guidelines and the statutory minimum sentence. Defendant understands the
22 following:

23 (a) At or before the time of sentencing, the United States will advise the Court of
24 any assistance provided by defendant in the prosecution of another person who
25 has committed a criminal offense. It is understood and agreed that a motion for departure
26 shall not be made, under any circumstances, unless defendant's cooperation is
27 "substantial." The United States has made no promise, implied or otherwise, that
28 defendant will be granted a "departure" for "substantial assistance." Further, no promise
has been made that a motion will be made for departure even if defendant complies with
the terms of this agreement in all respects, but has been unable to provide "substantial
assistance."

28 *For Count I, any

**For Count II, any sentence imposed shall include a term of supervised release
of not more than 5 years in addition to such terms of imprisonment, as well as
such restitution as the court may order and a \$100.00 special assessment fee.
Defendant understands that if he violates a condition of supervised release at
any time prior to the expiration of such term, the court may revoke the term of
supervised release, thereby resulting in the additional incarceration of defendant (over)

for not more than ^{in five} ~~two~~ (5) years.

(b) The United States agrees to consider the totality of the circumstances, including but not limited to the following factors, in determining whether, in the assessment of the U.S. Attorney, defendant has provided "substantial assistance" which would merit a government request for a downward departure from the applicable guideline sentencing range:

(1) the United States' evaluation of the significance and usefulness of any assistance rendered by defendant;

(2) the truthfulness, completeness, and reliability of any information or testimony provided by defendant;

(3) the nature and extent of defendant's assistance;

(4) any injuries suffered or any danger or risk of injury to defendant or defendant's family resulting from any assistance provided by defendant; and,

(5) the timeliness of any assistance provided by defendant.

(c) It is understood that even if a motion for departure is made by the United States, based upon defendant's perceived "substantial assistance," the final decision as to how much, if any, reduction in sentence is warranted because of that assistance, rests solely with the District Court.

7. The defendant understands that to establish a violation of importation of Hobbs Act Robbery, the government must prove each of the following elements beyond a reasonable doubt:

First: the defendant induced Yu Yo Pak to part with property by the wrongful use of threat of force or fear;

Second: the defendant acted with the intent to obtain the property that the defendant knew he was not entitled to receive;

Third: ~~interstate~~ ^{any} commerce was affected in some way.

The defendant understands that to establish a violation of Using and Carrying a Firearm During a Crime of Violence, the government must prove each of the following elements beyond a reasonable doubt:

First: the defendant committed the crime of Hobbs Act Robbery as charged in Count I of the indictment;

Second: the defendant knowingly brandished a firearm; and

Third: the defendant brandished the firearm during and in relation to the crime.

8. The defendant understands that the United States Probation Office will calculate

1 a "sentencing range" within the United States Sentencing Guidelines. The defendant understands
2 the Sentencing Guidelines are advisory, but will be used by the District Court in fashioning the
3 sentence. The defendant also understands that the facts he stipulates to herein will be used by
4 probation, pursuant to § 1B1.2 of the Sentencing Guidelines, in calculating the advisory
5 guidelines level:

6 a. The defendant was born in 1985 and is a citizen of the United States.

7 b. If the defendant cooperates with the United States by providing information
8 concerning the unlawful activities of others, the government agrees that any self-incriminating
9 information so provided will not be used against defendant in assessing his punishment, and
10 therefore, pursuant to § 1B1.8 of the sentencing guidelines, such information should not be used
11 in determining the applicable guidelines range.

12 c. On June 24, 2006, the defendant entered the Hafa Adai Pachinko in the Northwest
13 Plaza in Tamuning, Guam. Defendant used a black 9 mm Ruger, semi automatic handgun, serial
14 number 300-53394 and held it in his hand. Defendant pointed the gun at Yu Yo Pak placing her
15 in fear. He demanded for her money. Yu Yo Pak handed the defendant money from her waist
16 pouch. Defendant fled the scene on foot and was pursued by a security guard. During the
17 pursuit, defendant threw the 9 mm Ruger onto a tin roof. Defendant was detained and admitted
18 that he used the firearm to commit the robbery of Yu Yo Pak. Police recovered \$32.00 in cash
19 which the defendant hid during the pursuit.

20 d. The defendant understands that notwithstanding any agreement of the parties, the
21 United States Probation Office will make an independent application of the Sentencing
22 Guidelines. The defendant acknowledges that should there be discrepancies in the final
23 sentencing guidelines range projected by his counsel or any other person, such discrepancy is not
24 a basis to withdraw his guilty plea.

25 9. The defendant understands that this plea agreement depends on the fullness and
26 truthfulness of his cooperation. Therefore, defendant understands and agrees that if he should
27 fail to fulfill completely each and every one of his obligations under this plea agreement, or make
28

1 material omissions or intentional misstatements or engage in criminal conduct after the entry of
2 his plea agreement and before sentencing, the government will be free from its obligations under
3 the plea agreement; thus defendant, in addition to standing guilty of the matters to which he has
4 pled pursuant to this agreement, shall also be fully subject to criminal prosecution for other
5 crimes. In any such prosecution, the prosecuting authorities, whether Federal, State, or Local,
6 shall be free to use against him, without limitation, any and all information, in whatever form,
7 that he has provided pursuant to this plea agreement or otherwise.

8 10. The defendant understands that his sentencing may be continued, at the sole
9 discretion of the United States, until after the indictment and trial of any associates involved.
10 This will also enable the Court to see the full degree of the defendant's cooperation. The
11 defendant therefore waives any right he may have to any speedy sentencing and hereby agrees to
12 any continuance of his sentencing date as it may become necessary.

13 11. In exchange for the government's concessions in this plea agreement, the defendant
14 waives any right to appeal or to collaterally attack this conviction but reserves the right to appeal
15 the sentence actually imposed in this case. The defendant understands and agrees that the
16 government has bargained for a criminal conviction arising from his criminal conduct. If at any
17 time defendant's guilty plea or conviction is rejected, withdrawn, vacated or reversed, for
18 whatever reason, or is rendered invalid for any reason, or if any change of law renders the conduct
19 for which he was convicted to be non-criminal, defendant agrees that he will enter a guilty plea to
20 another charge encompassing the same or similar conduct. In such event, defendant waives any
21 objections, motions or defenses based upon the Statute of Limitations, Speedy Trial Act, or
22 constitutional restrictions as to the time of bringing such charges.

23 12. The defendant acknowledges that he has been advised of his rights as set forth below
24 prior to entering into this plea agreement. Specifically, defendant has been fully advised of, has
25 had sufficient opportunity to reflect upon, and understands the following:

26 a. The nature and elements of the charge and the mandatory minimum penalty provided
27 by law, if any, and the maximum possible penalty provided by law;

1 b. His right to be represented by an attorney;

2 c. His right to plead not guilty and the right to be tried by a jury and at that trial, the
3 right to be represented by counsel, the right to confront and cross-examine witnesses
4 against him, and the right not to be compelled to incriminate himself, that is, the right not to
5 testify;

6 d. That if he pleads guilty, there will not be a further trial of any kind on the charges to
7 which such plea is entered so that by entering into this plea agreement, he waives, that is, gives
8 up, the right to a trial;

9 e. Because this plea is entered pursuant to Federal Rule of Criminal Procedure
10 11(c)(1)(B), the defendant understands that he may not withdraw his guilty plea even if the court
11 does not accept the sentencing recommendation of the government or his counsel;

12 f. That, upon entry of a plea of guilty, or thereafter, the Court may ask him questions
13 about the offenses to which he has pled, under oath, and that if he answers these questions
14 under oath, on the record, his answers may later be used against him in prosecution for perjury or
15 false statement if an answer is untrue;

16 g. That he agrees that the plea agreement is voluntary and not a result of any force,
17 threats or promises apart from this plea agreement;

18 h. That he has read the plea agreement and understands it.

19 //

20 //

21 //

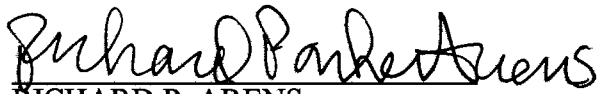
22 //

1 i. The defendant is satisfied with the representation of his lawyer and feels that his
2 lawyer has done everything possible for his defense.

3
4 DATED: 8/30/06


JUSTIN KEN TAISIPIC
Defendant


6
7 DATED: 8/30/06


RICHARD P. ARENS
Attorney for Defendant


10 LEONARDO M. RAPADAS
United States Attorney
Districts of Guam and CNMI

11
12 DATED: 8/17/06

By:


ROSETTA L. SAN NICOLAS
Assistant U.S. Attorney

14
15
16 DATED: 8/17/06


JEFFREY J. STRAND
First Assistant U.S. Attorney